

# CASH KRUGLER FREDERICKS

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May 24, 2021

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 PHILIP C. HENRY\*  
 \*OF COUNSEL

Via UPS Overnight Delivery and Email

Alan J. Kowalczyk, Esq.  
 Litigation Management Counsel, LLC  
 300 Centerville Road, Suite 303S  
 Warwick, RI 02886

**Re: Time-Limited Settlement Demand**

Our Clients:	Wanda Shadix and Sherrel "Dwaine" Shadix
DOI:	June 10, 2020
Your Client/Insured:	Yum! Brands, Inc. (Taco Bell)
Location:	2234 North, US-41, Calhoun, Georgia
Claim No.:	012007-054759-PA-01

Dear Mr. Kowalczyk:

As you know, our firm represents Wanda and Dwaine Shadix with regard to their claims arising from the significant personal injuries sustained by Wanda after contracting food poisoning from a Taco Bell in Resaca, Georgia on June 10, 2020. As previously discussed, we are sending this time-limited demand and supporting documents to provide your client and its insurer, Chubb/Ace American Insurance Company, an opportunity to resolve this claim within the available insurance limits and prior to any litigation. This demand is for pre-suit settlement purposes only and no portion of this letter shall be admissible should this matter proceed to trial.

**FACTS OF THE CASE & TIMELINE**

Wanda and Dwaine have been happily married for 46 years. For the past 28 years, they have lived in Sugar Valley, Gordon County, Georgia, which is near Resaca, Georgia. The Shadixes moved to Sugar Valley when Dwaine became pastor of Sugar Valley Church of God, a position he held until retiring early this past January. Like Dwaine, Wanda also worked in the Sugar Valley community for decades, previously working as a bank teller at various local branches for nearly 20 years, and most recently working as the assistant cafeteria manager with Ashworth Middle School, where she had also worked from 1992 to 2000.<sup>1</sup>

<sup>1</sup> Wanda returned to work at Ashworth Middle School in February of 2018 and intended to return to work when the 2020 school year started.

the bathroom or needs a bath. Dwaine has to brush her teeth, brush her hair, dress Wanda and help her with every single personal task. Every time she needs to move, whether it be to and from bed, to and from a chair, or simply to take a sip of a drink, Dwaine has to help. Every single movement and activity that we all take for granted, Wanda cannot do without someone's help. We have provided you with a couple short videos filmed by Dwaine that provide a small window into the types of struggles and difficulties Wanda faces daily.

While in no way capturing her full damages, including the pain and suffering she has experienced and continues to endure, Wanda's medical bills to date are as follows:<sup>7</sup>

Provider	Amount
AdventHealth Gordon Hospital	\$857,479.96
AdventHealth Gordon (Physician Charges)	\$25,112.00
Vanderbilt University Medical Center	\$254,163.25
Shepherd Center	\$625,337.00
<b>Total</b>	<b>\$1,762,092.21</b>

These special damages, of course, are only the starting point. The injuries suffered by Wanda have destroyed her quality of life. Her life has been forever changed through no fault of her own. Wanda works hard to be the best she can and doesn't complain. She tries to be strong because she worries about Dwaine more than herself, but the physical and emotional pain and suffering that Wanda has endured and will endure for the rest of her life is tremendous and far exceeds the special damages in this case. Wanda and Dwaine remain positive and are genuinely thankful for any improvement, no matter how small, but the reality is that Wanda's future is uncertain at best and she will never return to her pre-injury condition and quality of life. While Wanda and Dwaine are hopeful that she will be able to walk and use her arms again one day, no one can say for sure whether this will happen or, if it does, the extent and functionality of any movement she regains. At a time in their lives when they should be enjoying themselves, doing what they love, spending time with family and spoiling grandchildren, Wanda and Dwaine spend their days consumed by Wanda's condition and praying for a miracle.<sup>8</sup>

Dwaine has a significant claim as well for his loss of consortium. Although this claim is often symbolic, that is not the case here. Other than her ability to breathe, speak, hear and see, Wanda is completely dependent on others and that really means Dwaine. In addition to the grief, sorrow and stress of seeing his wife suffer immensely, Dwaine acts as Wanda's primary caregiver, as Wanda is essentially dependent on Dwaine for everything. Like Wanda, Dwaine is a wonderful person and hard worker. He does not complain about their situation and is as supportive and loving a husband to Wanda as you

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<sup>7</sup> We have enclosed herein copies of all medical bills we have received to date for your review.

<sup>8</sup> Even if their prayers are answered down the road, Wanda's claim is still worth well in excess of the policy limits afforded Taco Bell for this claim.

could imagine. That being said, his loss is significant and we believe a jury will return a verdict on the loss of consortium claim alone that far exceeds the insurance coverage in this case.

Jurors will be sympathetic to all that Wanda and Dwaine have suffered and will continue to suffer over the course of their lives. This should have never happened and we believe a jury will agree. The Shadixes are at a point in life when they should be able to relax and enjoy the fruits of decades of labor. Tragically, and through no fault of their own, that is no longer possible. Undoubtedly, a jury will love Wanda and Dwaine and will want to fully compensate them for all of their damages. We expect a jury to award an amount that far exceeds the limited insurance coverage afforded to Taco Bell.

#### TERMS OF SETTLEMENT/DEMAND

On behalf of Wanda and Dwaine Shadix, we are issuing this demand in the amount of Three Million and 00/100 Dollars (\$3,000,000.00) to provide Yum! Brands, Inc. (Taco Bell) and Chubb/Ace an opportunity to resolve our clients' claims within the available insurance limits. This is a one-time offer for your client(s) to get this case resolved within the available limits.

The material terms of this settlement demand are as follows:

- (1) **Time for Acceptance:** To accept this settlement demand, Yum! Brands, Inc. and Chubb/Ace shall deliver to Andrew Cash and/or Shane Bartlett at the offices of Cash, Krugler & Fredericks, LLC, 5447 Roswell Road, Atlanta, Georgia, 30342, a written acceptance of this settlement demand of Three Million and 00/100 Dollars (\$3,000,000.00) and the terms contained herein on or before 5:00 p.m. on the thirtieth (30<sup>th</sup>) day following receipt of this demand as shown by the date on the overnight delivery receipt. Written acceptance of this settlement demand shall be delivered (a) by fax to 404-264-1149, (b) by email to [acash@ckf.law](mailto:acash@ckf.law) / [sbartlett@ckf.law](mailto:sbartlett@ckf.law), or (c) by mail or hand delivery, provided it is timely. Following acceptance of the demand, we will provide written payment instructions, including whether any money will be placed in a structure/annuity/trust and how the settlement check(s) is to be made out. We will also provide a W-9 for our firm. Payment of the settlement funds shall be made within twenty-one (21) days from receipt of the payment instructions.
- (2) **Affidavit of Coverage:** Our clients demand and require that Yum! Brands, Inc. (Taco Bell) execute an affidavit verifying that there is no additional insurance coverage other than the policy issued by Chubb/Ace providing for \$3,000,000.00 in total coverage. The affidavit shall be provided within thirty (30) days of receipt of this demand, and timely production of the affidavit is a material term of this demand.
- (3) **Parties to be released:** Pending production of the above-referenced "Affidavit of Coverage," our clients agree to sign an appropriate release agreed to by the parties,

by Georgia law from the 30th day following the receipt of the demand up to and through the date of the judgment.

**PURPOSE OF DEMAND**

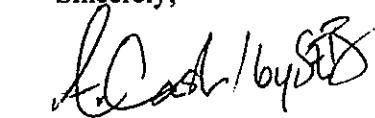
This demand is expressly made to give Yum! Brands, Inc. (Taco Bell) and Chubb/Ace an unequivocal opportunity to fully, finally and fairly resolve this matter so that all parties can avoid the trouble and expense of protracted litigation. As such, this demand is sent pursuant to *Southern General v. Holt*, 262 Ga. 267, 416 S.E. 2d 274 (1992), *Cotton States Mut. Ins. Co. v. Brightman*, 276 Ga. 683, 580 S.E.2d 519 (2003), dealing with negligent failure to resolve a claim. Again, we are providing Yum! Brands, Inc. (Taco Bell) and Chubb/Ace an opportunity to resolve these claims within the available limits as stated. That said, should your clients fail to resolve these claims and any subsequent judgment exceeds the demand, it is our clients' express intention to pursue all available avenues to collect the entire judgment, regardless of the available limits.

**EXPIRATION AND REVOCATION OF DEMAND**

This demand is by design a time-limited demand. Said offer to resolve the claims within the applicable liability limits of the insurance expires at the close of business at 5:00 p.m., on the thirtieth (30<sup>th</sup>) day following the receipt of this demand as shown by overnight delivery receipt and is by its terms expressly withdrawn at that time.

Please feel free to contact us should you have any questions. We look forward to your timely response.

Sincerely,



ANDREW B. CASH



SHANE E. BARTLETT

Enclosures (via thumb drive and emailed secure link)